

SIDNEY STRICKLAND AND ASSOCIATES, PLLC

3050 K ST. N.W., SUITE 101
WASHINGTON, DC 20007-5108
TELEPHONE: 202-295-4024
FAX: 202-672-6399

215349

SIDNEY L. STRICKLAND, JR.
SIDNEY.STRICKLAND@STRICKLANDOPLLC.COM



December 14, 2005

Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: City of Alameda-- Acquisition Exemption-- Alameda Belt Line, STB
Finance Docket No. 34798

Dear Secretary Williams:

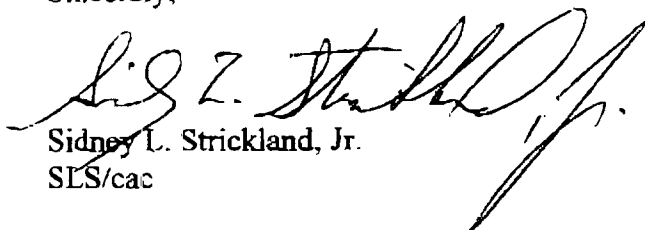
Enclosed for filing in the above-captioned proceeding is an original and ten copies of the Emergency Petition for Stay of Alameda Belt Line Railroad.

Please acknowledge receipt of this letter by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Ten (10) additional copies are enclosed for the Board's use and distribution.

If you have any questions, please contact me at (202) 295-4024.

Sincerely,


Sidney L. Strickland, Jr.
SLS/cac

cc: Sarah Baliff
John Sims

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Office of Proceedings

11/15/05

Page 2
Audio Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34798

**CITY OF ALAMEDA -- ACQUISITION EXEMPTION
--ALAMEDA BELT LINE**

EMERGENCY PETITION TO STAY

EXPEDITED HANDLING REQUESTED

William M. Bitting
Benjamin B. Salvaty
Hill, Farrer, and Burrill, LLP
300 South Grand Avenue
37th Floor-One California Plaza
Los Angeles, CA 90071-3147
(213) 620-0460

Sidney L. Strickland, Jr.,
Sidney Strickland and Associates, PLLC
3050 K Street, NW, Suite 101
Washington, DC 20007
(202) 295-4024

Attorneys for Alameda Belt Line

December 14, 2005



**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34798

EMERGENCY PETITION TO STAY

Alameda Belt Line Railroad (ABL) submits this Emergency Petition to Stay the Notice of Exemption filed by the City of Alameda, California (City) on December 9, 2005 (Notice), to acquire a 2.61 mile rail line owned by ABL, all related line of railroad extensions, and a 22-acre rail yard owned by ABL and valued at over \$18 million. The City seeks to invoke the class exemption at 49 C.F.R. § 1150.31, et seq., to trump preemption arguments being made in a pending court proceeding. Indeed, the Notice fails to mention that the City is seeking to grab rail property valued in excess of \$18 million for around \$30,000. One of the issues in the pending court proceeding is whether the ABL rail yard is an extension of the rail line pursuant an agreement between the parties. The City notes that its Notice is specifically intended to influence and affect the complicated issues pending in a California State Court wherein the City seeks a court order that would compel ABL to transfer the 22 acre yard valued at over \$18 million for about \$30,000. While the primary purpose of the Notice is to obtain leverage in the litigation to acquire the yard, the City fails to address whether the acquisition, in the first instance, would result in an adverse abandonment requiring advance approval pursuant to 49 U.S.C. Section 10903, or alternatively, if the trackage is yard trackage, whether the

provisions of 49 U.S.C. § 10906 restrict the Board's authority to regulate the transfer of the yard.

A stay is warranted here to protect the Board's jurisdiction, assure that the public interest in adequate rail transportation in the City of Alameda is maintained, and to protect the public against scam transactions that damage the integrity of the national rail system and the Board's process for regulating that system. Further, the Board's class exemption is procedurally inadequate to permit the Board to compile a record sufficient to resolve the issues raised by the Notice. The City is seeking to forego a hearing before the Board and to present the state court with the Board's decision as a "concluded" regulatory proceeding authorizing the transfer of the yard.

There is a strong likelihood that ABL will prevail on the merits contesting this Acquisition Exemption, and will suffer irreparable harm in the absence of a stay. Other interested parties will not be substantially harmed, and the public interest supports the granting of the stay.

STATEMENT OF FACTS

In 1918, City constructed a municipal belt line railroad along Clement Avenue, between Pearl and Grand Street, to serve the newly developing northern industrial area of the City to provide rail service to industries producing goods to aid United States efforts in World War I. Six years later, the City's City Council formed a committee to investigate and make recommendations for extending the belt line to serve a large scale project involving California Packing Corporation and Alaska Packers Association, as well as other future industrial development. The committee recommended a separate belt line company be formed to take over the existing municipal railway, and to extend

immediately the railway lines westerly to Webster Street, and to add further extensions of lines of railroad as industry expanded.

On September 16, 1924, the City enacted ordinance No. 259 N.S. (new series), setting forth an agreement to sell the belt line railroad to the Western Pacific Railroad Company ("WP") and The Atchison, Topeka and Sante Fe Railway Company ("ATSF"), for the purposes of owning and operating the municipal belt line railroad as a new corporation now known as the ABL.

The City, WP and ATSF formally executed an agreement on December 15, 1924. Pursuant to the agreement, City agreed to sell its belt line railroad to ABL for the sum of \$30,000. According to the City, paragraph 14 of the agreement, which is at issue in the court proceedings, gave the City an option to repurchase the belt line railroad:

Fourteenth: Said City shall have the right at any time hereafter to purchase said belt line railroad including all extensions thereof, for a sum equal to the original cost, together with the cost of any and all additional investments and extensions made therein by said ALAMEDA BELT LINE, provided, that said City shall give at least one year's previous notice of its intention so to do by ordinance to that effect; and provided that at the same time it purchases from the parties of the first part, or either of them as the case may be, the branch railroad, extensions and spur tracks referred to in the twelfth section hereof.

It is agreed that said ALAMEDA BELT LINE will keep an accurate account of the cost of additional investments and extensions, and file a verified report thereof annually with the City Clerk of said City, similar to the report filed with the Railroad Commission. It is further agreed and understood that the term "investments" as herein used shall not include the cost of upkeep and repairs.

On July 14, 1925, the Railroad Commission of the State of California approved the acquisition in a decision reported at 26 California Railroad Commission Decisions 802.

ABL then began operations as a rail carrier and has continued such operations.

Acquisition of the Line by ATSF and WP was approved by the Interstate Commerce Commission on January 16, 1926, in Acquisition And Construction By Alameda Belt Line, 105 I.C.C. 349 (1925) and supplemented at 124 I.C.C. 465 (1927).

Subsequently, ABL, among other things, obtained a 22-acre parcel of land for a rail yard. Throughout the years, ABL made numerous capital investments for its benefit as a rail carrier.

In 1998, the Surface Transportation Board (Board) authorized the granting of local trackage rights by ABL, now owned by BNSF Railway Company (BNSF) (as successor to ATSF) and Union Pacific Railroad Company (UP) (as successor to WP), to UP over 1.80 miles of ABL's rail line between MP 0.00 near Clement Avenue and MP 1.80 near Sherman Street. See Union Pacific Railroad Company --Trackage Rights Exemption -- Alameda Belt Line F.D. 33682, served November 24, 1998.

Based on staff recommendations, the Alameda City Council passed ordinance No. 2817 N.S. on November 2, 1999, giving notice to ABL that the City intended to exercise its option to repurchase the railroad and all extensions thereof on December 4, 2000, pursuant to the requirements of paragraph 14 of the parties' 1924 agreement.

ABL has challenged City's attempt to grab the multimillion dollar 22-acre rail storage yard for \$30,000 and has been engaged in a series of complex court proceedings before California trial courts and the California Court of Appeals, wherein ABL has also asserted federal preemption as defense to the City's land grab of the rail storage yard which is integral to provision of rail freight service in interstate commerce. Specifically, in January 2002, both ABL and the City filed

cross-motions for summary adjudication as to their causes of action for declaratory relief in a California court, ABL seeking a declaration that paragraph 14 was unenforceable on the grounds that the option lacked sufficient specificity to comply with the statute of frauds, and that the fixed price option would be an illegal restraint on alienation, and the City seeking a declaration that paragraph 14 was enforceable.

On April 11, 2002, the trial court issued orders granting ABL's motion and denying the City's motion. The court ruled as a matter of law that the repurchase option in paragraph 14 was not sufficiently definite to be enforceable under the statute of frauds. The City appealed and the California Court of Appeals subsequently overturned the trial court order and remanded the matter to the trial court for further proceedings. See Alameda Belt Line v. City of Alameda, 113 Cal.App. 4th 15, 5 Cal.Rptr.3d 879 (2003).

The City readily admits that it filed the Notice in order to trump ABL's federal preemption defenses in the Court proceedings. See Notice at p. 6.

Arguments

The standards for a petition for stay are: 1) whether there is a strong likelihood of success on the merits; 2) whether petitioner is irreparably harm in the absence of a stay; 3) whether issuance of a stay would substantially harm other interested parties; and 4) whether the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). Here, each of those criteria is met, and the City's Notice of Exemption should be stayed and revoked.

1. Likelihood of Success on the Merits

The Board has previously issued stays where parties present complex matters to the Board through the notice of exemption process. Indeed, recently the Board was confronted with similar issues and issued a "housekeeping stay". Subsequently, the Board rejected the Notice of Exemption. See The Burlington Northern Santa Fe Railway Company - Acquisition and Operation Exemption - State of South Dakota, STB Finance Docket No. 34645 (STB served Jan. 14, 2005) (South Dakota). There, the Board emphasized that the Notice of Exemption process "is typically reserved for uncomplicated and noncontroversial cases." Id. slip op. at 3. The Board further stated:

As we have explained in prior cases, see, e.g., Riverview Trenton Railroad Company -- Acquisition and Operation Exemption -- Crown Enterprises, Inc., STB Finance Docket No. 33980, slip op. at 6-10 (STB served Feb. 15, 2002), the § 1150.31 class exemption typically applies to "routine" transactions that are not subject to substantial controversy and opposition. The facts and issues presented in the pleadings filed to date regarding BNSF's notice of exemption, combined with the fact that this transaction is now tied up in state court litigation respecting BNSF's rights under the 1986 Operating Agreement, indicates that the transaction contemplated by BNSF is not "routine" or "noncontroversial" either.

Id. slip op. at 2-3.

The Board continued, "Under these circumstances, we will reject the § 1150.31 exemption notice filed by BNSF and direct BNSF to file either a § 10502 exemption petition or a formal § 10901 application, so that we will be able to compile a record that will allow us to resolve the issues raised." Id. slip op. at 3.

Presently, the posture of the dispute between the City and ABL is akin to that in South Dakota, as there is ongoing complex litigation in state courts pertaining to an agreement between the parties. Also, as in South Dakota, the Board needs to compile an adequate record to address the issues raised. The Notice, as filed by the City, is neither

routine nor without controversy. Indeed, it is unclear 1) whether the City has appropriately filed this proceeding as a 10901 acquisition in order to continue provision of rail freight service or whether the City should first obtain 10903 abandonment and discontinuance authority to attempt to acquire the trackage upon termination of the Board's jurisdiction; and 2) whether 49 U.S.C. Section 10906 applies to this proposed transaction. This proceeding involves the potential dismemberment of a vital link in the national rail network without a thorough review by the Board, and full regulatory scrutiny is warranted.

Consistent with the Board's reasoning in the South Dakota, the Notice should be stayed pending a full development of the record.

2. Harm to ABL

As discussed above, the filing of the Notice appears timed to allow the City to argue to the state court in the parties' pending litigation that the federal regulatory process is complete and that the court now has the jurisdiction to compel the actual transfer of the ABL rail line and other properties from ABL to the City. In the absence of a stay, the land transfers and total dismemberment of ABL could potentially be accomplished by judicial fiat, even while significant transportation and regulatory issues subject to the Board's jurisdiction remained unresolved by the Board. Moreover, any conditions imposed by the Board after the fact of pending court processes and rulings could come too late if a court decision mandates land transfers that undermine the financial viability of ABL. The potential for conflict between the court's imposition of orders dismembering ABL and/or severely impacting its financial viability and the

Board's exclusive and plenary jurisdiction over rail acquisitions, extensions, and abandonments is manifest.

Clearly, ABL will likely be subject to irreparable injury in the absence of a stay. Indeed, ABL could face a forced divestiture of the rail line and its rail line extensions as well as properties which may or may not be extensions of lines of railroad, without any review on the merits by the Board. This would clearly undermine Board jurisdiction to protect ABL and other interstate carriers from local government interests that have no authority over carrier purchases of carriers, rail line extensions or rail line abandonments. Further, avoidance of regulatory scrutiny and swift misuse of the exemption procedures to circumvent legal processes at this stage creates extreme uncertainty as to how ABL or any other interstate carrier under similar circumstances may later obtain any STB relief to revive a rail carrier (whose very existence stems from prior ICC/STB authorization) that has been dismembered by a city, county or state interested in the looting of the interstate rail network pursuant to a court-ordered transfer. The Board itself would face a cloud on its exclusive and plenary jurisdiction over line transfers like the subject transaction and unwinding nonconsensual, involuntary transactions ordered by a court.

3. No Injury to the City of Alameda or Any Other Interested Party.

A stay will not harm the City of Alameda, or any rail carriers currently operating on the subject rail line. As indicated in the Notice of Exemption by the City, the validity of contractual provisions which created Alameda Belt Line Railroad is being litigated in state court, with a trial date currently scheduled for April 2006. It seems that the urgency of a closing deadline is merely for litigation purposes, and is not advanced in good faith.

As further indicated in the Notice of Exemption, the closing date "is in part contingent upon the outcome of the pending litigation."

The City's Notice provides no indication that an immediate closing of the rail line purchase is required, that the City has taken any action or foregone any action in anticipation of an immediate closing, or that any other party has detrimentally relied upon a representation that the transaction would occur immediately upon the anticipated effective date of the exemption. Indeed, the legitimate motivations and reasons for the City's pursuit of the ABL rail line transfer at this particular time remain unclear, other than a clear land grab, paying \$30,000 for ABL's railyard which is worth over \$18 million. Of course, the urgency of a closing deadline for a sale by an unwilling party is no doubt alleged merely for litigation purposes, and is not advanced in good faith. As further indicated in the Notice of Exemption, the closing date "is in part contingent upon the outcome of the pending litigation."

4. Public Interest Favors a Stay

As noted above, no other party would be adversely affected by the granting of a stay. Indeed, the public interest will be advanced by allowing a thorough and considered review of the significant and permanent restructuring of rail service and relationships that the City proposes, directly impacting an STB regulated carrier. Where significant controversy clouds a coerced acquisition of railroad property which forms a vital link in the interstate freight rail network, denial of due process and full regulatory review is not in the public interest. The resulting impacts of the City's land grab on the national rail network have not been fully determined, and a stay of the exemption is accordingly in the public interest.

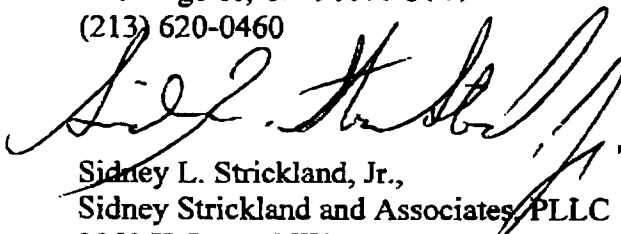
CONCLUSION

ABL has demonstrated that the stay criteria of Holiday Tours are more than satisfied in this proceeding, and the Board should stay City's Notice of Exemption proceeding pending a thorough review on the merits of the City's proposed transaction and its potentially significant and widespread implications. The City's efforts to game the adjudicative processes before the courts in California and undermine Board regulation with an exempt process intended to apply in routine, noncontroversial acquisitions in the normal course of business should not be rewarded.

WHEREFORE, ABL respectfully requests that City's Notice of Exemption herein be stayed.

Respectfully Submitted,

William M. Bitting
Benjamin B. Salvaty
Hill, Farrer, and Burrill, LLP
300 South Grand Avenue
37th Floor-One California Plaza
Los Angeles, CA 90071-3147
(213) 620-0460




Sidney L. Strickland, Jr.,
Sidney Strickland and Associates, PLLC
3050 K Street, NW, Suite 101
Washington, DC 20007
(202) 295-4024

Attorneys for Alameda Belt Line

CERTIFICATE OF SERVICE

Alameda Belt Line Railroad by and through its authorized representative, certify that on December 14, 2005, Petitioner sent copies of the foregoing Emergency Petition to Stay by first class mail and facsimile to: Charles H. Montange, Esq., 426 162nd Street, Seattle, Washington, 98177



Sidney L. Strickland, Jr.,
Sidney Strickland and Associates, PLLC
3050 K Street, NW, Suite 101
Washington, DC 20007
(202) 295-4024

William M. Billing
Benjamin B. Salvaty
Hill, Farrer and Burrill, LLP
300 South Grand Avenue
37th Floor-One California Plaza
Los Angeles, CA 90071-3147
(213) 620-0460

Attorneys for Alameda Belt Line